



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning & Development

Diane M. Sugimura, Director

CITY OF SEATTLE ANALYSIS AND DECISION OF THE DIRECTOR OF THE DEPARTMENT OF PLANNING & DEVELOPMENT

Application Number: 3003322
Applicant Name: Roger Richert
Address of Proposal: 1500 Westlake Av N

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to construct a two story, 1,720 square foot (sq. ft.) Marine Retail Sales and Service building over an existing pier. Project includes demolition of two existing structures.

The following approvals are required:

Shoreline Substantial Development Permit – To allow a marine retail sales and service use in an Urban Stable (US) shoreline environment pursuant to SMC 23.60.020 and 23.60.600.

Shoreline Conditional Use Permit - To authorize a water-related marine retail sales and service use to be located over water on a lot with a depth of less than fifty (50) feet of dry land in an Urban Stable (US) shoreline environment pursuant to WAC 173-27-160.

SEPA – Environmental Determination pursuant to SMC 25.05.

SEPA DETERMINATION: [] Exempt [X] DNS [] MDNS [] EIS

[] DNS with conditions

[] DNS involving non-exempt grading or demolition or
involving another agency with jurisdiction.

BACKGROUND DATA

Site Location and Zoning Designations

The Marina Mart building is located on the western shore of Lake Union, on the northeast corner of the intersection of Westlake Avenue North and North Galer Street. The property is within an Urban Stable (US) shoreline environment and an underlying Commercial 2 zone with a 40-ft height limit (C2-40').



Project Description

The proposed project involves removing the Franco's Hidden Harbor restaurant use and remodeling it to accommodate a marine retail sales and service use, together with an approximately 3000 square foot expansion of the building to further accommodate the same use. There will be no increase of the area of coverage over water nor any increase in height over the existing height. A number of rooftop elements will be eliminated by the proposed flat roof, reducing shadowing cast onto the moorage areas on the east side of the site.

Best Management Practices (BMPs) will be employed to prevent any materials from entering the water.

Public Comment

One public comment letter was received, recommending that any shoreline mitigation be applied to other public access projects around Lake Union. The Washington State Department of Natural Resources also commented, requesting notification of release or threatened release of any hazardous substances or any other adverse impacts in, on, under, or above state-owned aquatic lands.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030A of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

1. *The policies and procedures of Chapter 90.58 RCW;*
2. *The regulations of this Chapter; and*
3. *The provisions of Chapter 173-27 WAC*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy seeks to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. The proposed improvements to the Marina Mart would not adversely impact the state-wide interest of protecting the resources and ecology of the shoreline, and the improvements would provide for the continued operation of a facility that cannot occur economically without use of the water adjacent to the site. The subject application is consistent with the procedures outlined in RCW 90.58.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on ensuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60, that also incorporates the provisions of Chapter 173-27, WAC. Title 23 of the Municipal Code is also referred to as the Land Use and Zoning Code. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions which have also been set forth in the Land Use Code.

In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the relevant criteria set forth in the Land Use Code. The Shoreline Goals and Policies, part of the Seattle Comprehensive Plan, and the purpose and locational criteria for each shoreline environment must be considered. A proposal must be consistent with the general development standards of section 23.60.152, the specific standards of the shoreline environment and underlying zoning designation, any applicable special approval criteria, and the development standards for specific uses.

The proposed development actions occur on land classified as a waterfront lot (SMC 23.60.924) and is located within an Urban Stable (US) shoreline environment. The proposed improvements are associated with a marine retail sales and services facility to be constructed over water, and as such may be authorized in the US shoreline environment if the criteria for conditional uses in WAC 173-27-160 are satisfied.

Shoreline Policies

All discretionary decisions in the shoreline district require consideration of the Shoreline Goals and Policies, which are part of the Seattle Comprehensive Plan's Land Use Element, and consideration of the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220. The policies support the retention and expansion of existing water-dependent businesses such as the existing Marina Mart (please refer to Land Use Policy L339). An area objective for Lake Union is to retain the working character of the lake's shoreline for suitable water-dependent uses that serve marine businesses (please refer to Land

Use Policy LU254). The purpose of the Urban Stable (US) environment as set forth in Section 23.60.220 C7 is to support water-related uses by providing services such as marine-related retail and moorage at the Marina Mart.

The proposed accessory expansion of the Marina Mart would facilitate the continued and enhanced operations of existing marine retail sales and services use, a use supported by both the purpose of the US shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan.

SMC 23.60.152 - Development Standards for all Shoreline Environments

These general standards apply to all uses in the shoreline environments. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses are subject to the following:

- A. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as...fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
- B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.
- C. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels....
- D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
- E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catchbasins or settling ponds, interceptor drains and planted buffers.
- F. All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.
- G. All shoreline developments and uses shall control erosion during project construction and operation.
- H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species

- and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.
- I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.
 - J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.
 - K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.
 - L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.
 - M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.
 - N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.
 - O. Navigation channels shall be kept free of hazardous or obstructing development or uses.
 - P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.

As proposed and as conditioned below, the project complies with the above shoreline development standards. As conditioned, the short-term construction related activities should have minimal effects on migratory fish routes and do not warrant further conditioning.

The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. In conjunction with this effort; DPD developed a Director's Rule 2000-16, to apply best management practices (BMPs) to prevent erosion and sedimentation from leaving construction sites or where construction will impact receiving waters. Due to the adjacency of Lake Union, and the proposed work associated with demolition and construction of structures, the potential exists for impacts to adjacent waters during construction. Therefore, approval of the substantial development permit will be conditioned to require application of construction best management practices (BMPs). Completion of the attachment to the Director's Rule and adherence to the measures outlined in the attachment shall constitute compliance with BMP measures.

SMC 23.60.600 – Development standards for the US Environment

The proposal is subject to the development standards for the US environment. DPD has determined that the proposal comports with these standards.

Chapter WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, the criteria and procedures of SMC Chapter 23.60 are consistency with WAC 173-27 and RCW 90.58.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITONALLY GRANTED** subject to the condition noted at the end of this document.

ANALYSIS - SHORELINE CONDITIONAL USE

In the Urban Stable shoreline environment, a marine retail sales and services use is only allowed to have non-water-dependent facilities over water when the dry land portion of the lot is less than 50 feet in depth. As the dry land portion of Marina Mart site has less than this depth, the proposal requires a shoreline conditional use permit.

Pursuant to SMC 23.60.604, the Director, may authorize a non-water-dependent marine retail sales and services use on waterfront lots in the US Environment with the concurrence of the Department of Ecology, as either principal or accessory uses if the criteria for conditional uses in WAC 173-27-160 are satisfied. The overall purpose of a conditional use permit is to provide for flexibility in the application of use regulations consistent with the policies of the Shoreline Management Act (RCW 90.58.020).

SMC 23.60.034 Criteria for Shoreline Conditional Use Approvals.

Uses or developments which are identified in this chapter as requiring shoreline conditional use approval, and other uses which, although not expressly mentioned in lists of permitted uses, are permitted in the underlying zones and are not prohibited in the Shoreline District, may be approved, approved with conditions or denied by the Director in specific cases based on the criteria in WAC 173-27-160, as now constituted or hereafter amended, and any additional criteria given in this chapter. Upon transmittal of the Director's approval to the Department of Ecology (DOE), the permit may be approved, approved with conditions or denied by DOE. (Ord. 118793 Section 6, 1997; Ord. 113466 Section 2(part), 1987)

WAC 173-27-160 Review Criteria for Conditional Use Permits

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

The expansion and reconstruction is consistent with the policies of RCW 90.58.020 and the Seattle Shoreline Master Program. Those policies favor enhancement of the shoreline environment, allowing alterations of the natural or man-made environment in limited instances when commercial developments are dependent on their location and provide an opportunity for people to enjoy the shoreline. With respect to the western shore of Lake Union, the City's Shoreline Policies favor water-dependent recreational uses, and non-water-dependent commercial uses when providing access to the water, protecting views, and not usurping land usable for future water-dependent recreational uses¹.

The proposal does not change the existing shoreline environment for fish and would facilitate shoreline related commercial use in the overall context of a water-related commercial use. Views of the water would not be affected.

(b) That the proposed use will not interfere with the normal public use of public shorelines;

The expansion and reconstruction will have little interference with the normal public use of the shorelines. In fact, the new structure should facilitate additional public use of the shorelines through commercial interactions at the site.

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

The project is compatible with other authorized uses within the area and with uses envisioned for the area under the comprehensive plan and shoreline master program. The new structure will enhance the continued use of the site as a moorage facility for boat sales and complement the adjacent activities.

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

The project will not cause significant adverse effects to the shoreline environment. Based on the plans submitted, there should be an improvement to the shoreline environment resulting from the reconstruction. The reduced roof mass (reduced shadowing) seems likely to have only a positive impact, if any, on fish and juvenile salmonids that are known to travel along the shoreline at Lake Union.

(e) That the public interest suffers no substantial detrimental effect.

¹ Water-dependent and water-related uses are not required to provide public access on private lot pursuant to SMC 23.60.638.

The public interest will not suffer substantial detrimental effects from the project.

- (2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.*

In reviewing the proposal and visiting the site to examine development in the area, it does not appear that granting the shoreline conditional use would produce a substantial adverse effect on the shoreline environment. Numerous water-dependent development/uses over water north and south of the site have secondary water-related uses along this segment of the shoreline. There is no evidence that a cumulative impact from these water-related uses exists or would be created by the addition of this water-related use.

- (3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.*

SMC 23.60.944 of the master program classifies the existing “Marine retail sales and service” as a “water-related use.” The proposal as noted above and illustrated in the MUP plans—appears to demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program. The proposed use is classified in Seattle Master Program; therefore, this criterion does not apply.

- (4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.*

The master program does not prohibit water-related marine retail sales and service as a commercial use prohibited on waterfront lots in the US Environment. Refer to SMC 23.60.606B Commercial Uses, 23.60.926 “Marine retail sales and service” and 23.60.944 “Water-related use”.

Conclusion

SMC Section 23.60.064 E provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter 23.60, and with RCW 90.58.020 (State policy and legislative findings).

Thus, as shown in the applicant’s development plans, the Director has determined that the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

DECISION – SHORELINE CONDITIONAL USE

The Shoreline Conditional Use application is **APPROVED** per the MUP plans.

ANALYSIS-SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant's agent and annotated by the Land Use Planner. The information in the checklist, the supplemental information submitted by the applicant and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part, "Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation" subject to some limitations. Under such limitations/circumstances (SMC 25.05.665) mitigation can be considered.

Short-Term Impacts

Construction activities could result in the following adverse impacts: emissions from construction machinery and vehicles; increased dust levels associated with grading and demolition activities; increased noise levels; occasional disruption of adjacent vehicular traffic, and small increase in traffic and parking impacts due to construction workers' vehicles. All of these impacts are minor in scope and of short duration. Several construction-related impacts are mitigated by existing City codes and ordinances (such as the Stormwater, Grading and Drainage Control code and Street Use ordinance, and mitigating measures described above pursuant to the Shoreline Management Program) applicable to the project. Since the proposal site is located in a commercial area, noise impacts would be sufficiently mitigated by the Noise Ordinance and no other measures or conditions are warranted.

Long-Term Impacts

Long-term or use-related impacts are also anticipated from the proposal: increased demand on public services and utilities and increased energy consumption. These long-term impacts are not considered significant because the impacts are minor in scope.

Summary

In conclusion, no significant adverse effects on the environment are anticipated as a result of the proposal. No conditions are imposed as mitigation to specific impacts identified in the foregoing analysis, or to control impacts not regulated by codes or ordinances, per adopted City policies.

CONDITIONS – SEPA

None.

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

1. The owner(s) and/or responsible party (ies) shall take care to prevent debris from entering the water during construction and to remove debris promptly if it does enter the water. Materials and construction methods shall be used which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after construction. Appropriate equipment and material for hazardous material cleanup must be kept at the site.

CONDITIONS – SHORELINE CONDITIONAL USE

None.

Signature: _____ (signature on file) Date: June 8, 2006
Paul Janos, Land Use Planner
Department of Planning & Development

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Janos/doc/decisions other than platting/3003322 marine retail over water janos.doc